IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(Special Original Jurisdiction)

Thursday, the Ninth Day of September, Two Thousand and Four

Present :

The Hon'ble Mr.Justice J.CHELAMESWAR

W.P.No.17130 of 1994

Between :

Mohammad Waheeuddin,

S/o Md.Qamruddin,

Aged : 30 years,

R/o H.No.8-14-12/3,

Opp. Mr. Alam Tank, Hasan Nagar,

Hyderabad .. Petitioner

And

1. The Vice-Chairman and Managing Director,

Girijan Cooperative Corporation Ltd.,

Visakhapatnam

2. The Divisional Manager,

Girijan Coop. Corporation Ltd.,

Divisional Office, Srisailam

3. Manager,

Branch Office,

Girijan Coop. Corporation Ltd.,

Mannanur, Mahabubnagar District

4. The State of A.P. represented by

its Secretary to Government,

Social Welfare (S) Department,

Secretariat, Hyderabad .. Respondents

(R-4 is impleaded as per Court order in WPMP 25503/94, dt.29-11-94.)

Petition under Article 226 of the Constitution of India to issue a Writ, order or direction preferably in the nature of WRIT OF CERTIORARI, and after calling for the records pertaining to Proc.No.Rc.47/92/B, dated 10.9.1994, issued by the 2nd respondent and quash the same as illegal, arbitrary and unconstitutional and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the petitioner : Mr.K.Lakshmi Narasimha

Counsel for the respondents : Mr.N.Sridhar Reddy for R1 to R3

Govt. Pleader for Social Welfare

For R4

The Court made the following **ORDER :**

The writ petition is filed with the prayer as follows :

> "For the reasons stated in the accompanying affidavit the petitioner humbly prays that this Hon'ble Court may be

pleased to issue a writ, order or direction preferably in the nature of Writ of Certiorari and after calling for the records pertaining to Proc.No.Rc.47/92/B, dated 10.9.1994, issued by the 2nd respondent and quash the same as illegal, arbitrary and unconstitutional and pass such other orders as are deemed fit and proper."

The petitioner is an employee of the Girijan Cooperative Corporation of which the 1st respondent is the Vice-Chairman and Managing Director. The petitioner stated in the affidavit filed in support of the writ petition that he was interviewed on 29.4.1990. He was selected by a Selection Committee by the proceedings dated 29.5.1990 and thereafter his name was kept in the reserved list. Subsequently, he was appointed as a `Measurer cum Watchman' by an appointment order dated 28.11.1991 in the pay scale of Rs.740-1150 and allotted to Bhadrachalam Branch office of Paloncha division of the above Corporation. By the proceedings dated 5.7.1993, the services of the petitioner was terminated on the ground that his initial appointment was contrary to G.O.Ms.No.215, Social Welfare (S) Department, dated 23.8.1986. Challenging the said termination, the petitioner earlier approached this Court by way of W.P.No.9840 of 1993. By an order dated 25.10.1994, the said writ petition was allowed on the ground that the termination order was not preceded by a show-cause notice and an opportunity was denied to the petitioner. Aggrieved by the said decision, the respondent carried the matter in appeal in W.A.No.1331 of 1994 unsuccessfully by an order dated 20.1.1994, a Division Bench of this Court was pleased to dismiss the above mentioned writ appeal.

Subsequently, another notice dated 10.9.1994 was issued to the petitioner calling upon the petitioner to explain as to why his services should not be terminated on the ground that his initial appointment was contrary to G.O.Ms.No.215, Social Welfare (S) Department, dated 23.8.1986. Challenging the above mentioned show-cause notice dated 10.9.1994, the present writ petition is filed.

Initially an interim order staying the further proceedings in pursuance of the show-cause notice was issued, subsequently the same was vacated. In view of the vacation of the interim orders, the respondents proceeded to act on the show-cause notice dated 10.9.1994 and finally an order of termination dated 3.7.1996 was

issued. The substance of the termination order is that the appointment of the petitioner is in contravention of the terms of G.O.Ms.No.215, Social Welfare (S) Department,d ated 23.8.1986 and therefore the services of the petitioner is terminated. In view of the subsequent developments, the petitioner filed WPMPs viz., WPMP No.25502 of 1994 and WPMP No.25504 of 1994 seeking amendment of the prayer in the writ petition and also seeking permission to raise additional grounds.

The only submission made by the learned counsel for the petitioner is that under the above mentioned G.O. directing the publication of a notification in the Andhra Pradesh Gazette, the body of the notification reads as follows :

"**Notification**

> In exercise of the powers conferred under sub-paragraph (i) of paragraph 5 of the fifth schedule to the Constitution of India, the Governor of A.P. hereby directs that the posts of salesman and Measurer-cum-Watchman in the domestic requirements depots in the scheduled areas of the state under the control of the Girijan Cooperative Corporation Ltd., Visakhapatnam shall be reserved to be filled in only by the local members of the scheduled tribes not withstanding anything contained in any other order, rule of law in force."

From the above extract, it is clear that that the notification was issued in exercise of the power conferred under sub-paragraph (i) of paragraph 5 of the V Schedule to the Constitution reserving certain posts for the Girijan Cooperative Corporation only with the local members of the Schedule Tribes. The learned counsel submitted that such a notification issued under para (5) of V Schedule to the Constitution require to be assented to by the President of India and until such assent is given by the President of India, the notification would be inoperative.

Inspite of the pendency of the matter for over a decade in this Court, no counter affidavit is filed by the State of Andhra Pradesh in this matter. In the affidavit filed in support of WPMP No.25502 of 1994, the petitioner made a categoric statement that the said notification is hit by sub-para (4) of Schedule V of the Constitution "… because no assent of the President is obtained and is therefore it shall have no effect."

Under V Schedule to the Constitution, the Governor of the State to which the Schedule is applicable has the power to make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. The exercise of such a power is subjected to important restrictions contained under sub-para (4) and (5) of the V Schedule. Under sub-para (4), any such regulation made by the Governor is required to be submitted to President for his assent. Sub-para (4) reads as follows :

> "4. All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect."

Consequences of not obtaining the assent of the President are also indicated in para (4) to the effect that until such an assent is given, the regulation would have no effect. The other limitation on the power of the Governor is provided under sub-paragraph (5) by which it is declared that wherever there is a Tribes Advisory Council in existence before making any regulation, the Governor is required to consult such Tribes Advisory Council for the sake of completion of the Scheme of V Schedule. In this regard, it may be mentioned that para (4) of the V Schedule obligates the States to which the Schedule applies to constitute a Tribes Advisory Council. The petitioner in his affidavit filed in support of WPMP No.22502 of 1994 also asserted that there is a Tribes Advisory Council in the State of Andhra Pradesh and even that body was not consulted before issuing the above referred regulation. The factual allegations made in the affidavit of the writ petition regarding the above mentioned two aspects have not been denied by the State of Andhra Pradesh which is a party to these proceedings and have not filed any counter nor is there any representation when the matter is taken up for hearing. In the circumstances, the allegations made in the affidavit filed in the writ petition go unrebutted and therefore this Court has no option, but to accept the statement that the assent of the President was not obtained in connection with the notification in question. Therefore, the notification will have no legal efficacy until the assent of the President is obtained and as a consequence the order dated 3.7.1996 of the respondent by which the petitioner's service was terminated is without any basis in law as the said order on which the services of the petitioner is terminated is based only on the ground that his

initial appointment is contrary to the above referred notification.

The Writ Petition is therefore allowed as prayed for.

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knk 9.9.2004

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Thursday the Ninth day of September Two thousand and four.

REGISTRAR

To

1. The Vice-Chairman and Managing Director,

Girijan Cooperative Corporation Ltd.,

Visakhapatnam

2. The Divisional Manager,

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Divisional Office, Srisailam

3. Manager,

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4. The State of A.P. represented by

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5. Two CD copies